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WAL-MART ASSOCIATES, INC.

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 YVONEE RENEE NORIEGA,

13 Plaintiff,

14 vs.

15 Wal-Mart Associates, Inc., a Delaware  
16 corporation; and DOES 1 through 10,

17 Defendants.

Case No.:

*[Removed from Alameda County Superior  
Court, Case No. RG21099613]*

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. §§ 1332, 1441 and  
1446 (DIVERSITY JURISDICTION)**

Complaint Filed: May 20, 2021  
Trial Date: None

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19 **NOTICE OF REMOVAL**

20 Pursuant to 28 U.S.C. sections 1332, 1441 and 1446, Defendant WAL-MART  
21 ASSOCIATES, INC., by and through its attorneys of record, hereby removes the above-entitled  
22 action from the Superior Court of the State of California in and for the County of Alameda, to  
23 the United States District Court for the Northern District of California, on the following grounds:

24 **BASIS FOR REMOVAL - DIVERSITY OF CITIZENSHIP**

25 1. On May 20, 2021, Plaintiff Yvonne Renee Noriega filed a Complaint in the  
26 Superior Court of the State of California in and for the County of Alameda styled *Yvonne Renee*  
27 *Noriega v. Wal- Mart Associates, Inc., et al.*, Case No. RG21099613.

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1           2.       Removal of a case to federal court is governed in part by 28 U.S.C section 1441,  
2 which generally allows removal of “any civil action brought in a State court of which the district  
3 courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a).

4           3.       Pursuant to 28 U.S.C. section 1332, the United States District Court for the  
5 Northern District of California has original jurisdiction over the parties and the subject matter of  
6 this action because it is an action arising in Alameda County, the amount in controversy exceeds  
7 the sum of \$75,000, exclusive of interest and costs, and it is an action between citizens of different  
8 states. 28 U.S.C. §§ 1332(a), 1441. *See also* L.R. 3-2(d).

9           4.       A copy of Plaintiff's Summons, Complaint and Civil Case Cover Sheet, filed by  
10 her in the Superior Court of the State of California, County of Alameda, is attached hereto as  
11 Exhibit 1. A copy of the Answer to the Complaint filed by Defendant on June 23, 2021, is  
12 attached hereto as Exhibit 2. Defendant is informed and believes that the documents provided  
13 in Exhibits 1 and 2 hereto constitute the operative pleadings in the state court case file in this  
14 matter.

15           5.       Wal-Mart Associates, Inc., is a Delaware corporation, with its principal place of  
16 business in Arkansas. (Declaration of Juan C. Araneda (“Araneda Decl.”), ¶2, Exh. A; Complaint  
17 at ¶18.) Wal-Mart Associates, Inc., maintains its executive office in Arkansas, and the  
18 management of Wal-Mart Associates, Inc.’s operations and finances is performed in Arkansas.  
19 (Araneda Decl. Exh. A.)

20           6.       The defendants designated Does 1 through 10 in Plaintiff's Complaint are fictitious  
21 defendants and have not been served to Defendant’s knowledge. (*See* Complaint, ¶19.) Un-served  
22 defendants need not join in the notice of removal. *See Emrich v. Touche Ross & Co.*, 846 F.2d  
23 1190, 1193 n.1 (9th Cir. 1988). Additionally, the citizenship of fictitious defendants is  
24 disregarded for purposes of removal. 28 U.S.C. § 1441(b)(1).

25           7.       Plaintiff is a citizen of California. (Complaint, ¶¶15, 17.) Accordingly, this action  
26 is between citizens of different states, specifically California and Arkansas. This complete  
27 diversity of citizenship existed at the time Plaintiff filed her Complaint and it exists at the time  
28 of this removal.

8. As required by 28 U.S.C. section 1446(b), this petition is filed within thirty (30) days after Defendant was served with the Summons and Complaint. Specifically, on May 25, 2021, Plaintiff served her Complaint upon Defendant's agent for service of process (CT Corporation) in California. (Araneda Decl., ¶3, Exh. B.)

### **AMOUNT IN CONTROVERSY**

9. Plaintiff alleges claims for damages that exceed \$75,000. As discussed further below, Plaintiff's Complaint seeks unspecified amounts of general and special damages. (Complaint, ¶¶31, 36, and Prayer for Relief.)

10. In cases where the state court Complaint is silent or unclear as to the amount of damages sought by the plaintiff, a defendant must establish that the amount in controversy exceeds \$75,000. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992). The "amount in controversy" requirement is satisfied by setting forth, in the removal petition, underlying facts supporting defendant's assertion that the amount in controversy exceeds \$75,000. *Richmond v. Allstate Ins. Co.*, 897 F. Supp. 447, 450 (S.D. Cal. 1995).

11. In determining the amount in controversy for purposes of assessing the propriety of a removal, a Court must assume that the allegations in the Complaint are true and must assume that a jury will return a verdict for the plaintiff on all claims made in the Complaint. *See, White v. FCI USA, Inc.*, 319 F.3d 672, 674-76 (5th Cir. 2003). As set forth below, even a low estimate of what Plaintiff could recover if the jury ruled for her on all of her claims in the Complaint would unavoidably result in an overall recovery that would exceed \$75,000.

12. Among the damages sought in Plaintiff's Complaint are damages for claims under the California Fair Employment and Housing Act ("FEHA") (i.e., age discrimination), as well as claims for wrongful termination in violation of public policy. If Plaintiff is successful on these claims, Plaintiff will be entitled to recover lost past and future earnings and related employee benefits. *See, Commodore Home Systems, Inc. v. Superior Court*, 21 Cal.3d 211, 221 (1982); *Parker v. Twentieth Century-Fox Film Corp.*, 3 Cal.3d 176, 181 (1970).

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1           13. Among the damages sought in Plaintiff's Complaint are claims for economic  
2 damages. Plaintiff alleges that her employment was terminated on September 14, 2020.  
3 (Complaint ¶1.) At the time of her termination of employment, Plaintiff's regular hourly earnings  
4 rate was \$26.58. (Araneda Decl., ¶4, Exh. C.) Thus, a very conservative estimate of Plaintiff's  
5 alleged backpay wage loss alone, not taking into account alleged lost benefits, at the time of  
6 removal is \$42,528.00 (\$26.58 per hour x 40 hours per week x 40 weeks since termination). Of  
7 course, this amount would continue to increase through the time of judgment.

8           14. Emotional distress damages are also considered in determining the amount in  
9 controversy. *See Kroske v. U.S. Bank Corp.* 432 F.3d 976, 980 (9th Cir. 2015). Assuming, as  
10 one must, that a jury found Defendant to have discriminated against Plaintiff on the basis of her  
11 age, then a six-figure award of emotional distress damages seems unavoidable. Experience and  
12 common sense dictate that even the most conservative jury, could not possibly find for Plaintiff  
13 on all of those claims and yet fail to award her at least \$25,000 in emotional distress damages.  
14 As the Ninth Circuit in *Kroske* reasoned, emotional distress damages "would add at least an  
15 additional \$25,000" to a plaintiff's claim. *Kroske*, at 980.

16           15. Attorneys' fees (future and accrued) are also properly considered in calculating  
17 the amount in controversy for purposes of removal on grounds of diversity. *See Fritsch v. Swift*  
18 *Transp. Co. of Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018); *Galt G/S v. JSS Scandinavia*,  
19 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees to be included in the  
20 amount in controversy, regardless of whether such an award is discretionary or mandatory). If  
21 Plaintiff prevails on her causes of action under the FEHA, then the law is clear that she will be  
22 awarded her reasonable attorneys' fees. Even if Plaintiff's counsel is extremely efficient, it would  
23 defy belief that her attorneys would incur less than \$40,000 if they litigated this case through  
24 pleadings, discovery, motions, pre-trial and trial. Indeed, in *Ponce v. Med. Eyeglass Ctr., Inc.*,  
25 No. 215CV04035CASJEMX, 2015 WL 4554336, at \*3 (C.D. Cal. July 27, 2015), for example,  
26 the court recognized that rates for attorneys may range between \$425.00 to \$725.00 per hour and  
27 that estimates of the number of hours expended through trial for employment cases have ranged  
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1 from 100 to 300 hours. Assuming a conservative rate of only \$400.00, even if only 100 hours are  
2 spent on a case, attorneys' fees alone would total approximately \$40,000. *Id.*

3 16. With respect to Plaintiff's request for punitive damages, federal courts have noted  
4 that most punitive damage verdicts against larger corporations are substantial. *Richmond, supra*,  
5 897 F. Supp. at 450-51; *see also Aucina v. Amoco Oil Co.* 871 F.Supp.332, 334 (S.D. Iowa 1994)  
6 (concluding in a discrimination and wrongful termination case that the purpose of punitive  
7 damages is to capture the defendant's attention and to deter others from similar conduct and, thus,  
8 the plaintiff's claim for punitive damages could alone exceed the jurisdictional minimum). When  
9 one assumes, as is mandated in this analysis, that Plaintiff will prevail on all of her causes of action,  
10 and that the jury would award her punitive damages, it is hard to imagine that punitive damages  
11 would be less than \$75,000.

12 17. Based upon the foregoing, it is respectfully submitted that the amount in  
13 controversy exceeds \$75,000, and that this action is properly removed to this Court.

14 **VENUE**

15 18. This action is now pending in Superior Court of the State of California, County of  
16 Alameda, and thus may be properly removed to the United States District Court for the Northern  
17 District of California, pursuant to 28 U.S.C. section 1441(a). *See also* L.R. 3-2(d).

18 19. Promptly after filing of this Notice of Removal, Defendant will file in the Superior  
19 Court of the State of California, County of Alameda, its Notice of Filing of Notice of Removal,  
20 with a copy of this Notice of Removal attached thereto. A copy of Defendant's Notice of Filing  
21 of Notice of Removal is attached hereto as Exhibit 3. Further, Defendant has served upon Plaintiff  
22 a copy of this Notice of Removal and will promptly serve upon Plaintiff a copy of Defendant's  
23 Notice of Filing of Notice of Removal.

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**INTRA-DISTRICT ASSIGNMENT**

20. Pursuant to 28 U.S.C. section 1391(a)(2), venue is proper in the United States District Court for the Northern District of California, sitting in either San Francisco or Oakland, because a substantial part of the alleged events giving rise to the claims in this lawsuit occurred in the County of Alameda, and this is an action arising in Alameda County. *See* L.R. 3-2(d).

21. This Notice of Removal of Action is executed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

DATED: June 24, 2021

FISHER & PHILLIPS LLP

By: /s/ Juan C. Araneda  
Jason A. Geller  
Juan C. Araneda  
Attorneys for Defendant  
WAL-MART ASSOCIATES, INC.